credit serves merely to interpose between exporter and importer a third party usually of undoubted solvency and repute who renders a service by paying the exporter right away and giving a substantial margin of credit to the importer — the defendants in this case. The plaintiffs were never concerned with the contract of sale.

There was, in my opinion, an absolute acceptance of this bill of exchange by the defendants.

In the result therefore there must be judgment for the plaintiffs for the amount claimed with costs.

Claim allowed.

Solicitors: *Hilborne & Co.; Allen & Gledhill.*

NAM THIAM SIEW v. CHUANG WAI LAN

[C.A. (Thomson C.J., Smith and Neal JJ.)
December 27, 1958]

[K.L. — F.M. Civil Appeal No. 56 of 1957]

*Damages — Loss of support — Assessment — Civil Law Enactment, F.M.S. No. 3 of 1937 — Johore Civil Procedure Rules, O.4 r.3A.**

Costs — Unnecessary matter included in appeal record — Deduction from costs.

This was an appeal relating to the quantum of damages awarded to the respondent for the death of her husband in a road accident. When the case was originally tried the learned Judge found that the death was due to the negligent driving of the defendant's vehicle and ordered judgment to be entered for the respondent for damages to be assessed by the Assistant Registrar. The Assistant Registrar held an enquiry and assessed the general damages at $36,000. The respondent appealed to the High Court and the learned Judge awarded damages for loss of support at $84,000. He arrived at this figure by multiplying the annual value of support which the dependents were receiving from the deceased, which he assessed at $6,000 a year, by 14 as he estimated the future span of working life of the deceased to be 14 years. On appeal against that award,

Held: (1) the amount of damages in this case was pre-eminently a matter of assessment and not a matter of mere calculation and the trial Judge was therefore wrong in ordering the damages to be assessed by the Assistant Registrar, but in this case the irregular assumption of jurisdiction had been waived;

(2) the award of $84,000 for loss of support cannot stand as there was an error in calculating the damage and also an error in arriving at the figure of the estimated value of the loss of support.

* See now R.S.C., O.36 r.57.

COURT OF APPEAL, Appeal from Johore Bahru.

Denis Murphy and *Omar bin Salleh* for the appellant.

C. H. Withers Payne and *R. Murugason* for the respondent.

Cur. Adv. Vult.

Thomson C.J.: This is an appeal from a decision of Hepworth, J., awarding $86,500 damages to the respondent for the death of her husband in a road accident. The only question involved is as to the *quantum* of damages.

The respondent is the widow and the administratrix of the estate of one Lim Jit Yang who died on 3rd August, 1955, as a result of injuries which he received in a road accident on 1st August, 1955. It was alleged that the fatal injuries were caused by the negligent driving of the appellant's lorry and the respondent sued as administratrix and on behalf of herself and the other dependants of the deceased under the provisions of the Civil Law Enactment.

The case was originally tried by Shepherd, J., who found that the death was due to the negligent driving of the defendant's vehicle and ordered judgment to be entered for the respondent for damages to be assessed by the Assistant Registrar.

Presumably this order for the assessment of damages by the Assistant Registrar was made under O.4 r.3A of the Johore Civil Procedure Rules which were in force at the material time but have since been repealed but in my opinion it should not have been made. In the first place the rule under which it was made only applies where "it appears to the Court that the amount of damages sought to be recovered is substantially a matter of calculation." Here the amount of damages was pre-eminently a matter of assessment and not a matter of mere calculation. In any event the provisions of the rule are permissive and it is difficult to think of any matter which calls more insistently for the exercise of his judicial functions by a trial Judge than the assessment of damages in a case of this nature.

Be that as it may, however, no objection was taken to this course by either of the parties and the case has now reached the stage where it must be assumed that both parties have consented to its being dealt with on the basis that at the worst there has been an irregular assumption of jurisdiction which has been waived rather than any complete failure of jurisdiction.

The Assistant Registrar proceeded to hold an inquiry and concluded by assessing what he called general damages at $36,000 and finding that in addition the plaintiff was entitled to $350 for expenses incurred in taking out Letters of Administration.

Against that decision the respondent appealed, apparently on the ground that the damages awarded were inadequate. The matter then came before Hepworth, J., who awarded damages as follows:—

for pain and suffering	... ...	$ 500
for loss of expectation of life	...	$ 2,000
for loss of support	... ...	$84,000

Against so much of that decision as awards $84,000 for loss of support the appellant has now appealed.

I will deal with the matter in more detail shortly, but briefly what Hepworth, J., did was this. He assessed the value of the support which the dependants were receiving from the deceased at $500 a month or $6,000 a year. He assumed a future span of working life for the deceased of 14 years. He disregarded any question of any benefit the dependants might have derived by way of accelerated succession to the deceased's estate and he went on to calculate that 14 years' purchase of $6,000 a year was $84,000. The present value of an annuity, however, is not the amount of the annuity multiplied by the number of years for which it is to run. It is the capital sum which at any given rate of interest will produce the annuity and as a matter of simple arithmetic assuming a rate of interest of 5% the present value of an annuity of $6,000 per annum for 14 years is in the neighbourhood of $60,000 and is not $84,000. There has thus on the face of the award been such a wholly erroneous estimate of the damage as to justify this Court in interfering.

Apart, however, from this error in calculation it seems to me that there was an error in arriving at the figure of $500 a month as being the estimated value of the loss of support which formed the subject matter of the calculation.

The deceased was a jobbing electrician who at the time of his death was 40 years old. His widow was then 35 years old and there were 8 children all under 16 years of age. He owned premises at No. 17, Holloway Lane, Singapore, and although no books were produced and the evidence on the point was far from being precise his gross income would appear to have been in the neighbourhood of $1,000 a month. Out of this he had to support himself and his family, he had to defray his business expenses and he was paying $150 a month interest on a debt of $15,000 secured by a mortgage on the premises at No. 17, Holloway Lane. His estate was sworn for estate duty at a net value of $21,000. It is to be noted, however, that in arriving at that net value the Holloway Lane premises were valued at $15,000 only, against which of course was set off the amount of the mortgage debt and apart from the produce of Insurance policies the balance of the estate was valued at $2,600 only.

On the evidence as a whole the Judge arrived at a period of 14 years as the probable duration of the deceased's profitable working life had he not been killed and with this figure it is difficult to see any reason to quarrel. On the material available he went on to estimate $500 a month as the probable value of the support which had been lost by the dependants. In arriving at this figure he included a sum of $150 representing interest on the mortgage of the Holloway Lane premises which I shall discuss in a moment but the balance of $350 was in my opinion fully justified by the evidence as to the household expenditure of the family.

Clearly the position of the Holloway Lane premises must be considered. The family were living there before the deceased died and either they will have to go on living there, in which case they will have to keep up payment of interest on the mortgage, or they will have to sell the premises and either buy or pay rent for living accommodation elsewhere.

There are, however, two considerations to be borne in mind in this connection.

One is that the premises in question are not wholly residential. They consist of a two-storey shophouse, the upper part of which was used as living accommodation for the family and the lower part of which was used for the purposes of the deceased's business. In no event will the family go on occupying the whole of the premises. If they remain in occupation of the upper portion the lower portion will be available for renting out, and the rent will pay at least in part the interest on the mortgage. Alternatively, it will be open to them to sell the premises and acquire smaller premises elsewhere.

And this brings me to the second point which is that although there is no direct evidence on the point the value of the premises, particularly if they are sold with vacant possession,

must be well in excess of the sum of $15,000 for which they were valued for estate duty purposes. In the first place there is no question that a mortgagor has been prepared to advance $15,000 and I have yet to hear of a mortgagor particularly in Singapore who is prepared to advance on mortgage anything like 100 per cent. of the estimated value of shophouse property. In the second place the premises and the contents were insured for a sum of $25,000 and according to the estate duty affidavit the value of the contents, apart from a motor-car which was separately insured, was only about $1,000.

In the circumstances it seems to me that it was wrong to hold that the dependants had lost something worth $150 a month in this connection. They may have lost something but in the absence of any material on which this loss could be assessed it seems to me the only way of dealing with it is to treat it as having set off against it the value of the accelerated succession to the Holloway Lane premises.

Having thus come to the conclusion that $150 should be deducted from the trial Judge's estimate of the monthly value of the loss of support, accepting his estimate of 14 years as the probable duration of the deceased's working life and making allowance for the common law damages which have been assessed at $2,500 and some small allowance to cover the contingency of re-marriage on the part of the widow I would assess the damages under the Civil Law Enactment at $38,000, and I would distribute this in the same proportion as the trial Judge the amount awarded by him, that is to say:—

1. $18,500 to the widow
2. $ 2,000 to the daughter, Lim Mee Peng
3. $ 2,500 to the daughter, Lim Lai Pang
4. $ 3,000 to the daughter, Lim Pang Chin
5. $ 3,500 to the son, Lim Leak Fang
6. $ 4,000 to the son, Lim Kwee Pang
7. $ 2,000 to the daughter, Lim Ai Pang
8. $ 1,500 to the daughter, Lim Ang Pang
9. $ 1,000 to the son, Lim Pung Meng

The amounts payable to the children should be paid to accounts in the Post Office Savings Bank to be operated by the Assistant Registrar who should have discretion to pay out suitable sums from time to time for education and maintenance, the balance being payable to each child on attaining the age of majority.

As regards costs, the appellant should have the costs of this appeal. With regard to these costs, however, I note with regret that a very great deal of unnecessary matter has been included in the appeal record. For example, the deceased owned a motor-car and 32 pages of the record are devoted to copies of the Insurance policies covering this vehicle for 4 years preceding his death. These documents had no bearing whatsoever on the issues in the appeal as they came before us. Again, 31 pages are devoted to copies of receipts of small subscriptions to friendly associations such as the Straits Juvenile Union and the Ek Iu Club which again had no bearing whatsoever on the issues in the appeal. The costs of including these documents in the record should be deducted from the appellant's costs.

Neal, J., authorises me to say that he agrees with this judgment.

Smith J.: This is an appeal by the owner of a lorry against the administratrix of the estate of the deceased who was killed in a motor-car accident. The appeal is against the *quantum* of damages awarded by the learned trial Judge in respect of the loss resulting to the deceased's dependants from his death. The learned trial Judge awarded a figure of $84,000 arrived at by adopting a figure of $500 *per mensem* as the loss suffered, i.e., $6,000 *per annum*, which figure he multiplied by fourteen as being a reasonable number of years' purchase. It is quite clear that even adopting the figure of the learned trial Judge, i.e. $500 *per mensem* for fourteen years, the present value of such a sum is not the $84,000 which he awarded but a considerably lower figure. If one takes the normal investment figure of 5% *per annum* then the sum today which at 5% *per annum* will produce $84,000 spread over fourteen years is $59,400.

Actuarially, therefore, the sum awarded by the learned trial Judge is excessive even if his figures are accepted. In my view, however, I consider that his monthly figure of $500 average loss suffered by his dependants is somewhat inflated for reasons which I shall give. I also considered that he has not taken into consideration certain factors.

The deceased was a self-employed electrician who carried out small contracts, principally repair work, with the assistance of one or more employees. Of its kind it was quite a flourishing business but it was precarious since one-third to one-half of his work was provided by three businesses which were controlled by fellow clansmen of the deceased and it was essentially a one-man business. The learned trial Judge estimated that the present earnings of the deceased were in the neighbourhood of $700 *per*

mensem and he estimated the present loss of support suffered by his dependants as $500 *per mensem*. I agree that this is probably true as at the date of death. I also agree that a period of fourteen years is reasonable to work on as his probable working life, bearing in mind all possible vicissitudes. I do, however, consider that $500 *per mensem* as the average loss likely to be suffered by the dependants over fourteen years is excessive in view of the very precarious nature of his livelihood. I consider a figure nearer $400 *per mensem* would be more realistic.

Certain benefits which accrued to the dependants by the death of the deceased must be taken into consideration. The deceased left a motor-car worth about $2,000 and stock worth about $1,000. I consider that if the business had continued in the ordinary way and finally come to an end with the husband's retirement, there would have been no car and no stock at his death.

There must also be taken into consideration the fact that the widow, although she still had to pay off the mortgage on the house, would have that part of the house which was formerly used as business premises available for subletting, and also that although she, as a widow, has very little chance of remarrying, there is perhaps now some chance of her doing so in view of the fact that she will have control of a house. The house itself from the insurance figure appears to be worth more than its bare mortgage figure of $15,000.

After making due allowance for the motor-car, stock, house, prospect of remarriage and common law damages for the widow, I also consider that $38,000 is a fair figure for the Civil Law Enactment damages. I agree with the distribution proposed by the learned Chief Justice and also with his award of and comments on costs.

Order accordingly.

Solicitors: *M. Ismail; Murugason & Co.*

Re MAT JUNUS BIN RIDU

[R.Cr.J. (Rigby J.) March 4, 1958]

[Penang — Criminal Revision No. 5 of 1958]

Criminal Law and Procedure — Possession of property reasonably suspected of being stolen or fraudulently obtained — Previous convictions — Conviction and sentence — Minor Offences Ordinance, 1955, s.29(1) and (5) — Charge — Notice.

This Revision arose on the application of the Deputy Public Prosecutor for the purpose of regularising the conviction and sentence of the prisoner who was charged with and convicted of the offence of possession of property reasonably suspected of being stolen or fraudulently obtained under section 29(1) of the Minor Offences Ordinance and sentenced to 4 months' imprisonment.

Under section 29(1) the maximum sentence for the offence is 3 months' imprisonment or a fine not exceeding $100 or both. In this case the prisoner had admitted to 7 previous convictions, which rendered him liable to the enhanced penalty provided by section 29(5) of the Ordinance.

On revision the learned Judge directed that the conviction as recorded against the prisoner under section 29(1) be expunged from all Police and Prison records and a conviction under section 29(5) be substituted therefor.

In the course of his judgment, the Judge dealt with the practical question as to the proper subsection which an offender with previous convictions should be charged. To charge him under section 29(5) would be tantamount to disclosing to the Magistrate the fact of his previous convictions, which would be clearly undesirable if the offender claims trial to the charge. On the other hand, if he is charged under section 29(1) and pleads guilty, can his plea be then recorded as being made under section 29(5)? The learned Judge suggested that the proper course would be to serve upon the accused, contemporaneously with the charge, a notice to the following effect:

> "Take notice that at your trial on the charge annexed hereto under section 29(1) of the Minor Offences Ordinance you are liable, upon conviction, to the enhanced penalties provided by section 29(5) of the said Ordinance by reason of the fact that you have been previously convicted of an offence punishable under this section (or Chapter XII or Chapter XVII of the Penal Code). *" (* whichever is applicable).

REVISION IN CHAMBERS.

Rigby J.: The prisoner in this case pleaded guilty to the charge preferred against him of possession of property reasonably suspected of being stolen or fraudulently obtained, and having thereby committed an offence punishable under section 29(1) of the Minor Offences Ordinance, 1955.

The brief facts of the case were that he was apprehended by a Police patrol at 6.45 a.m. in possession of a sack containing 2 fowls. Upon questioning by the Police he admitted that he had stolen them; but the Police were unable to trace or find the owners.

The Magistrate sentenced him to four months imprisonment as from the date of his arrest.

The maximum term of imprisonment for an offence under section 29(1) is three months' imprisonment or a fine not exceeding $100 or both. The prisoner, however, had no less than seven previous convictions over the last seven